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No. 324

Supreme Court of the United States

——— TERM, A. D. 1953

J. & L. SNOUFFER, INC., A CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF DELAWARE AND CITIZEN OF THE STATE OF DELAWARE,

Petitioner-Appellant-below,

vs.

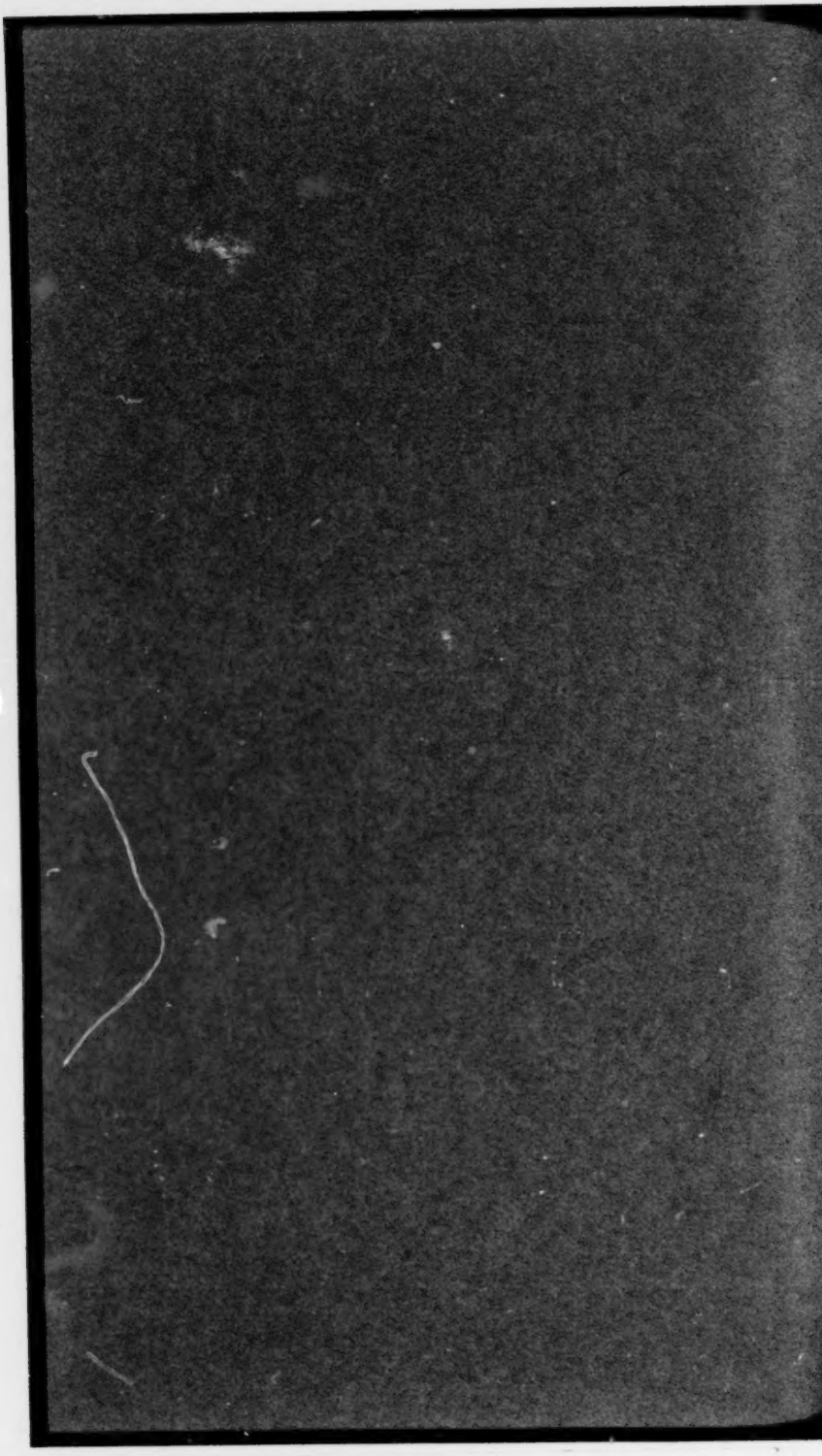
WILBUR B. ADAMS, ROBERT D. AYERS, ORLAND R. CRAWFIS, JOSIAH E. DUFFEY, DINNA M. FRAMES, MINNIE C. MATHEWS, CATHERINE VANETTEN, RESIDENTS AND CITIZENS OF FRANKLIN COUNTY, OHIO,

Respondents-Appellees-below.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

MATTHEW L. BIGGER,
50 E. Broad St., Columbus 15, Ohio,
PAUL R. GINGHER,
8 E. Long St., Columbus 15, Ohio,
HAROLD E. GOTTLIEB,
Citizens Bank Bldg., Zanesville, Ohio,
Attorneys for Petitioner.

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus 15, Ohio



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Petitioner-Appellant-below,

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PETITION FOR WRIT OF CERTIORARI.

To The Honorable Fred M. Vinson, Chief Justice, Hugo L. Black, Stanley Reed, Felix Frankfurter, William O. Douglas, Robert H. Jackson, Harold N. Burton, Tom C. Clark and Sherman Minton, Associate Justices,

Your petitioner respectfully shows:

I.

SUMMARY STATEMENT OF MATTER INVOLVED.

The petitioner is a corporation duly incorporated and organized under the laws of, and is a citizen of, the state

of Delaware and duly authenticated and authorized to do business in the state of Ohio. The respondents are all citizens and residents of the state of Ohio. The petition in the District Court below shows these facts. The petition of petitioner alleged the amount involved was far in excess of $3,000.00.

This is an original action in equity brought in the District Court of the United States for the Southern District of Ohio, Eastern Division, by the petitioner herein against the respondents herein as individuals, seeking a restraining order and permanent injunction, restraining respondents individually, from enforcing or attempting to enforce a judgment rendered by the Court of Appeals of Franklin county, Ohio in chancery, in favor of the individual respondents herein, operative on the record thereof against the petitioner herein in Case No. 4239 therein.

This is not a proceeding or action in the District Court of the United States against a state court or an action by appeal or error from a judgment of a state court, or an action to vacate or reverse the judgment of a state court as assumed and acted upon by the District Court, the Court of Appeals and the respondents below.

The petition of petitioner herein, below is set out in full on pp. 2a-11a, R., Appendix.

The basis of the action in the U. S. District Court on the facts alleged in petition was that the judgment in Case No. 4239, was and is opposed to the controlling, fundamental and established principles of equity, is inequitable and unconscionable, and

Rights asserted which are created by the 14th Amendment to the United States Constitution, in that said judgment itself operated to deny petitioner its property without due process of law and resulted in denying petitioner the equal protection of the laws and is void, in that the

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judgment destroyed and deprived the corporation of the use of said quarry and business without compensation (pp. 3a-9a, R., Appendix), the operation and development of a quarry being made lawful by the state being in excess of the power of the court under the 14th Amendment to the U. S. Constitution to render that judgment, and since "all quarries" in Ohio were legalized and made lawful by act of the legislature, sections 898-4-5, and 1177-43, General Code, Ohio, and placed under the jurisdiction of and control of an administrative body with power to adopt necessary rules and regulations to supervise their operation and development, to suffer other quarries to operate in the same region and under same conditions as applied to petitioners' quarry was a denial of the equal protection, application and enforcement of the laws. (See pp. 3a, 8a, 9a, Appendix R and pp. 2, 4, and 5, 11 petition for re-hearing.)

The action in equity in the District Court was filed under sections 1331-1332 (a) (1), Title 28, U. S. C. A.

The petitioner herein also sought a declaratory judgment determining the rights and obligations of this petitioner and respondents under (p. 10a, R., Appendix), said judgment. Such a proceeding being authorized by Title 28, U. S. C. A., Ch. 151, Section 2201, p. 227, Part VI and Rule 57. Federal Rules Civil Procedure Title 28, U. S. C. A., p. 246.

It was alleged in the petition of the petitioner in the District Court that respondents had filed a petition in the Court of Common Pleas, Franklin county, Ohio (pp. 3a-5a, Appendix R.) alleging that the defendent (which was an Ohio Corporation bearing the same name as your petitioner, which succeeded to all the rights, property, franchises and obligations of the Ohio Corporation by transfer duly affected under the laws of Ohio), **proposed to establish**

a quarry on the west side of the Scioto river and about two (2) miles north of a small village called Dublin, that the respondents herein owned land on the east side of the river, that some of the land had houses on them, and that **if said quarry was established** that the quarrying for stone, and the blasting and crushing of stone **"will cause"** the walls to be severely damaged that the noise **"will be"** intolerable and **"will cause"** the houses of plaintiffs, respondents herein to be unsafe for occupancy, **"will materially"** impair the value of their property, **"will cause"** dust and dirt to settle on their property, and **"will make"** their premises undesirable and unfit for habitation; and dust and dirt from blasting and crushing **"will be"** injurious to the health of occupants, that the plaintiffs-respondents herein **"will suffer"** permanent and irreparable damage that plaintiffs therein do not have an adequate remedy at law, and **prayed for permanent injunction** restraining defendent quarry corporation, **"from establishing, maintaining or operating a stone quarry"** and from **"blasting, crushing stone in any manner"** on such premises. Petitioner alleged said quarry was not operating or established when respondent's petition was filed. (P. g-a, R., Appendix.)

That when the case came on for trial in the state court after answer with general denial was filed, plaintiffs therein over objections of defendant filed by leave of court, what was called a supplemental petition—containing no new allegations of material facts, merely alleged that defendant corporation had started operation and renewed the prayer contained in original petition (see pp. 3a-6a, Appendix, R.) No summons was issued on alleged supplemental petition.

Petitioner herein alleged in its petition in the U. S. District Court that nothing was alleged in said respondents petition in the state court about any nuisance, or that said quarry was operated in a negligent or unlawful manner

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or that any injury or damage was suffered by or inflicted upon any individual plaintiff therein, or on his or her property, by any unlawful or negligent act or otherwise (see pp. 5a, 9a, Appendix R), or that any legal rights of said respondents had been invaded or injured.

The judgment of the Court of Appeals, Franklin county, Ohio, merely found that the plaintiffs-respondents herein were entitled **to the relief prayed for, to wit:** an injunction permanently restraining the quarry corporation from establishing, maintaining or operating the proposed quarry, or from blasting, crushing or quarrying stone. There was no finding of any fact that any legal right of respondents had been invaded, or any legal injury inflicted on any individual or individual's property in any manner whatever (pp. 6a-7a, R., Appendix.)

The allegations of respondents' petition in the state court is set out on pp. 3a to 6a, R., Appendix; the judgment of the Ohio Court of Appeals in Chancery is set out on pp. 6a-7a, R., Appendix. The Supreme Court of Ohio denied motion to certify and the judgment of the Court of Appeals of Franklin county, Ohio, became the final judgment (p. 7a, R., Appendix).

Petitioner alleged in its petition (pp. 8a, 9a, R. Appendix) that said proposed quarry was located in a region which has been known as a quarry region for over one hundred years, and that it was declared a lawful business under the laws of the state of Ohio; that it had been licensed by the state for years to manufacture and sell agricultural meal, that other quarries have been operating in same region for over 60 years without interference.

The petitioner alleged it had no adequate remedy at law, that irreparable damage had and would continue to result unless respondents were restrained as prayed for.

The respondents filed a motion presumably under Rule 12 (b) of the rules of the Sixth Circuit Court of Appeals to dismiss said action alleging as grounds, 1, lack of jurisdiction of the subject matter by the District Court; 2, that petition fails to state a claim against defendants upon which relief can be granted; 3, that the issue raised is res judicata (p. 11a, R., Appendix). The respondents admitted the material allegations of the petition. Rule 12 (b) does not provide for a defense of res judicata by motion, that is provided by Rule 8, paragraph (c) as an affirmative defense.

The matter was heard before Justice Frank A. Picard by substitution and his opinion rendered July 18, 1952 (p. 12a, R., Appendix) and the final order thereon filed, August 11, 1952 (p. 17a, R., Appendix) sustaining said motion on all grounds and dismissing said action with prejudice, denying petitioner the right to amend—to all of which petitioner excepted.

Notice of appeal to the Court of Appeals for the Sixth (6th) Circuit was filed August 29, 1952 and copy served on attorney for the defendants-respondents herein. Bond on appeal was filed August 29, 1952 (pp. 1a and 2a, R., Appendix).

Transcript of the docket and journal entries with the original papers were filed and docketed as Case No. 11732 in the Court of Appeals for the Sixth Circuit on the eighth day of October, 1952. The brief containing the questions involved as required by Rule 21a of the Court of Appeals for the Sixth Circuit was filed and docketed November 7, 1952. An appendix containing copies of the original papers in the District Court was filed, to wit: the petition of petitioners, the motion of respondents to dismiss the proceedings, the opinion of the Court of Appeals and final order

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sustaining the motion of respondents to dismiss the petition of the plaintiff (pp. 1a-17a, inclusive, R., Appendix).

An order was entered (p. 19, R.) by the Court of Appeals April 15, 1953, sustaining the order of District Court on the ground only of "res adjudicata" and citing two cases, one a federal case and another an Ohio case (which petitioner contended in the petition for rehearing, page 4, paragraph 8, have no application whatsoever to the issue of res adjudicata as applied to the petition of petitioner in this case and affirming said order but failing or neglecting to pass upon the other two grounds set out in the order of the District Court August 11, 1952 (p. 17a—R., Appendix) to wit:

1. That plaintiff is not the real party in interest. That plaintiff is bound by the decree of the state court, the jurisdiction of which has already attached and accordingly this court has no jurisdiction over the subject matter.

2. That complaint fails to state a claim against the defendants upon which relief can be granted. That complaint is dismissed without leave to amend.

A petition for rehearing as provided by Rule 28, Rules of the Sixth Circuit Court of Appeals, was filed the twenty-ninth day of May, 1953 (p. 21, R., Appendix).

The petition for a rehearing set up the contention that the Court of Appeals treated this proceeding in the District Court as the District Court did, as an appeal and error proceeding from a state court, and as a proceeding to vacate and reverse a judgment of a state court.

The court's attention was called to the fact that this was an original proceeding in equity between individuals to enjoin the enforcement of a state judgment wherein facts were alleged which rendered the judgment inequitable and unconscionable and opposed to the controlling, established principles of equity, and

That the judgment violated rights created by the 14th Amendment to the United States Constitution, rendering the state judgment void and unenforceable.

That under the petition of this petitioner in the District Court and under the Constitution, law and applicable authorities of the United States Supreme Court and the United States Court of Appeals, jurisdiction was established in the District Court, that the District Court was mandatorily required to take jurisdiction and grant a hearing, that on a motion to dismiss as filed by the respondents, that the court was confined to allegations of fact set forth in the petition and that the claim of res judicata was not available under that motion, that to deny petitioner a hearing was a violation of both the 14th Amendment and of the 5th Amendment to the United States Constitution.

That the action and order of the Court of Appeals was in direct conflict with the applicable controlling decisions of the United States Supreme Court and United States Courts of Appeals.

The questions presented to the Court of Appeals on the decision and order of the District Court on the motion of respondents to petition of petitioner for decision on the appeal were,

1. Did the District Court have jurisdiction of the subject matter of the petition under motion of respondents?

2. Did petition fail to state a claim upon which relief can be granted?

3. Was the issue raised by petition and motion res judicata?

The District Court answered all of these questions in the affirmative, except the first, and District Court ruled the

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District Court did not have jurisdiction of the subject matter of the petition in the federal court, because petitioner was bound by the decree of the state court.

The Court of Appeals ignored the first two questions and affirmed the order and judgment of the District Court on the third question only (p. 19, R.) and cited two cases, one of which was federal and one Ohio, which petitioner contended were wholly inapplicable, according to the reports of those cases.

An order was entered on the eighth day of June, 1953 (p. 35, R.), denying said petition.

No opinion was rendered by the Circuit Court of Appeals on either order, except that embraced in said orders.

II.

JURISDICTIONAL STATEMENT.

The statutory provision which petitioner believes sustains the jurisdiction of this court is Section 1254, Title 28, U. S. C., paragraph (1).

The date of the order and judgment in the Court of Appeals is June 8, 1953 (p. 35, R.), denying the petition of petitioner, for rehearing of the order entered April 15, 1953 (p. 17, R.), which was filed May 29, 1953.

This order denying petition for rehearing was the final order.

Nat. Lab. R. Bd. v. MacKay Rad. & Tel. Co., 304 U. S., 333, 82 L. Ed., 1381.

III.

QUESTIONS PRESENTED.

1.

Whether the Court of Appeals erred in affirming the order and judgment of the District Court in dismissing the petition of plaintiff-petitioner in the District Court on the sole ground of res adjudicata.

2.

Whether the Circuit Court of Appeals erred in affirming the judgment and order of the District Court which held (p. 17A, R., Appendix)

a. That "the plaintiff is not the real party in interest and the plaintiff is bound by the decree of the state court, jurisdiction of which has already attached and accordingly this court has no jurisdiction over the subject matter".

Thereby treating this case as a proceeding on appeal and error from a state court instead of an original proceeding in equity—in the United States court between individuals to enjoin the enforcement by such individuals of a state judgment which plaintiff contended under facts alleged was inequitable and unconscionable and involved rights set up under the 14th Amendment to the United States Constitution.

b. That the complaint of plaintiff in the District Court fails to state a claim against defendants upon which relief can be granted.

c. That the issue raised is res adjudicata.

d. That the petition is dismissed with prejudice, without leave to amend.

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3.

Whether the Court of Appeals erred in affirming the judgment and order of the District Court and denying the petitioner-plaintiff a hearing on the merits thereby denying due process of law and the equal protection of the laws contrary to the 14th and 5th Amendments to the United States Constitution.

4.

Under Act of Congress Title 28, U. S. C., p. 227, Chap. 151, Section 2201, part VI, Rule 57, Fed. Rules Civil Procedure, Title 28, p. 246, the petitioner was granted the right to file an action for a declaratory judgment in a matter which under the petitioner's petition involved a right asserted under the United States Constitution, rendering the state judgment void and involving a right under the fixed, controlling principles of equity, which rendered enforcement of the state judgment by the individual respondents inequitable and unconscionable and unenforceable under the 14th and 5th Amendments to the Constitution of the United States and under the applicable controlling decisions and rules of the United States Supreme Court and the United States Court of Appeals. The question is whether the Court of Appeals erred in affirming the order and judgment of the Court of Appeals and denying the right of petitioner to invoke the jurisdiction of the District Court to hear and determine such matter.

5.

It was alleged in plaintiff's petition in the District Court (p. 5-a, 9-a and 8-a, R., Appendix), that the operation and development of the quarry, referred to in the petition in the District Court, was made lawful by the state of Ohio. No injury to the legal rights of any individual respondent or his or her property was alleged

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against petitioner in the state court or involved in the finding or judgment in the state court. The operation and development of said quarry was permanently enjoined by the judgment in the state court without any compensation adjudged or paid therefor.

Did the Court of Appeals err in affirming the order and judgment of the District Court and thereby deny the petitioner-plaintiff the equal protection of the laws and due process of law contrary to the 14th Amendment to the United States Constitution?

6.

Whether the Court of Appeals is and was confined to the allegations set forth in the petition of plaintiff filed in the District Court in considering and determining whether the District Court erred in its judgment and order on the motion of defendants to the petition of the plaintiff in the District Court and,

Did the Court of Appeals err in not confining itself to the allegations of such petition?

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1.

This is an original action in equity, between citizens of different states. The controversy involves more than $3,000.00;

The United States Court of Appeals rendered a decision affirming the judgment and order of the District Court which is probably in conflict with the applicable controlling decisions of this court in this, to wit:

Petitioner contends this case involves a substantial federal question. The decisions of this court have declared that where federal jurisdiction exists, when an action in

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equity is filed in the federal courts between individuals seeking to enjoin the enforcement of a state judgment which has become final, whether valid or void, but facts are alleged which it is contended render such judgment inequitable and unconscionable under the controlling established principles of equity, and it is contended that rights are asserted as created by the United States Constitution which have been violated by the state judgment which render such judgment void under the 14th Amendment to the United States Constitution.

This court has declared under such a state of facts that such action is a new and original proceeding in the federal courts and is not an attack upon the state court, or a proceeding on appeal or error from the state court to vacate or set aside the state judgment but a new case and the federal court must take jurisdiction. The Court of Appeals below treated this action as a proceeding as an appeal or error from the state court as revealed by its orders entered p. 19 and 35, R., and its action and decision is in conflict with Smythe v. Ames, 169 U. S., 466, 478, 516, 518, 520, 522; 42 L. Ed., 819-838, 839. Hart v. Keith, etc., 262 U. S., 271, 273; 67 L. Ed., 977, 979. Swafford v. Templeton, 185 U. S., 482, 493, 494; 46 L. Ed., 1005, 1008, wherein it was declared it was error to dismiss a petition, such as filed in the District Court in this case on a motion of respondent.

2.

The decision and action of the Court of Appeals in affirming the order and judgment of the District Court is in conflict with the controlling decisions of this court as declared in Wells Fargo v. Taylor, 254 U. S., 175, 183, 184; 65 L. Ed., 205, 211, 212. Marshall v. Holmes, 141 U. S., 589, 35 L. Ed., 870; Ex parte Simon, 208 U. S., 141, 52 L. Ed., 429; Simon v. Southern Ry. Co., 236 U. S., 115, 122, 124, 125, 59

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L. Ed., 492; Pub. Serv. Co. v. Cosboy, 250 U. S., 153, 160; 63 L. Ed., 908; Nat. Surety Co. v. State Bank, 120 Fed., 593.

These cases declared in substance "Where the elements of federal and equity jurisdiction are present * * * under facts as alleged in petitioner's petition herein * * * the federal courts have jurisdiction to grant the injunction sought."

3.

The Court of Appeals' decision in affirming the order of the District Court dismissing the action and petition of petitioner, on the grounds of res judicata and ignoring the question of jurisdiction, this being an original case in equity between individual citizens residing in different states involving more than $3,000.00 and involving a controversy wherein is set up rights guaranteed by the 14th Amendment to the United States Constitution is in conflict with federal decisions of various courts as follows,

Landan v. Publ. Utility Co., 234 Fed., 152, 156. This decision was by Justice Sanborn, cir. ct. judge. Consold, Wyoming v. Champion Mfg. Co., Cir. Ct., N. D. Calif., 62 Fed., 945, 949, 950.

4.

The decision of the Circuit Court of Appeals in affirming the order and judgment of the District Court in sustaining the motion of respondents to dismiss the petition of petitioner, is in conflict with the decisions of both this court and the other Courts of Appeals in this, to wit:

The order and judgment of the Court of Appeals, this being an original case in equity between individual citizens of different states, involving a right set up, created by the United States Constitution, reveals on its face that the Court of Appeals went outside of the allegation of the petition to ascertain facts and reasons, instead of being con-

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fined to the allegations of the petition, in order to justify the ruling as to the issue of res judicata and ignore the question of jurisdiction.

Stewart v. Masterson, 131 U. S., 151, 157, 33 S. Ed., 114;
McArthur v. Porters Lessee, 1 Peters, 626, 7 L. Ed., 290;
Cooper v. Connar, 107 Fed. Ind., 207-209. U. S. Ct. Appeals, Dist. Columbia;
In re Interstate Oil Corp., 63 Fed. 2d, 674, 676.

5.

The decision and order of the Court of Appeals in affirming the order and judgment of the District Court sustaining motion of respondents to dismiss action and petition of petitioner in the District Court and ignoring the action and prayer of petitioner for a declaratory judgment filed under an Act of Congress, and ignoring the question of jurisdiction thus conferred by Act of Congress, was and is in conflict with the decisions of the Circuit Courts of Appeals in the following decisions:

Market v. Swift Co., 187 Fed. 2d, 104, Cir. Ct. App., N. Y. Mutual L. Ins. Co. v. Prejci, 123 Fed. 2d, 594. This case involved the Declaratory Judgment Act of Congress and declared the right therein created was jurisdictional.

6.

It appears from the summary statement above and from the petition of petitioner filed in the District Court, the quarrying operations of all quarries was made legal by statute in the state of Ohio.

That the judgment, against the enforcement of which by the individual respondents, the petition sought an injunction, merely restrained the lawful operation of said quarry, without any finding of any invasion or injury to the legal rights of any respondent or to his or her property, without any compensation, paid or adjudged therefor.

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Therefore, the order and judgment of the Court of Appeals in affirming the order and judgment of the Court of Appeals resulting in denying petitioner a hearing on such petition and denying the relief sought by the petitioner under rights asserted under the 14th Amendment to the United States Constitution was and is in conflict with the applicable decisions of this court as follows:

Mosher v. Phoenix, 287 U. S., 29, 32, 77 L. Ed., 148, 150;

Cuyahoga R. R. v. Akron, 240 U. S., 462, 463, 464, 60 L. Ed., 743, 744;

Regan v. Farmers L. and Trust Co., 154, U. S. 362, 397-399, 38 L. Ed., 1014;

Chicago v. Chicago, 166 U. S., 226, 233-235, 41 L. Ed. 979, 983-984;

Near v. Nimes, ex rel., 283 U. S., 697, 707-711; 718-721, 75 L. Ed., 1357, 1363.

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the United States Court of Appeals, for the Sixth Circuit, commanding said court to certify and send to this court, a full and complete transcript of the record and of the proceedings of the Circuit Court of Appeals had in the case numbered and entitled on its docket, No. 11732, J. & L. Snouffer, Inc., Appellant v. Wilbur B. Adams et al., Appellees, to the end, that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the orders and judgment herein of said United States Circuit Court of Appeals be reversed by this court and for such further relief as may appear equitable, necessary and proper to this court on the record.

MATTHEW L. BIGGER,
50 E. Broad St., Columbus 15, Ohio,
PAUL R. GINGHER,
8 E. Long St., Columbus 15, Ohio,
HAROLD E. GOTTLIEB,
Citizens Bank Bldg., Zanesville, Ohio,
Counsel for Petitioner.

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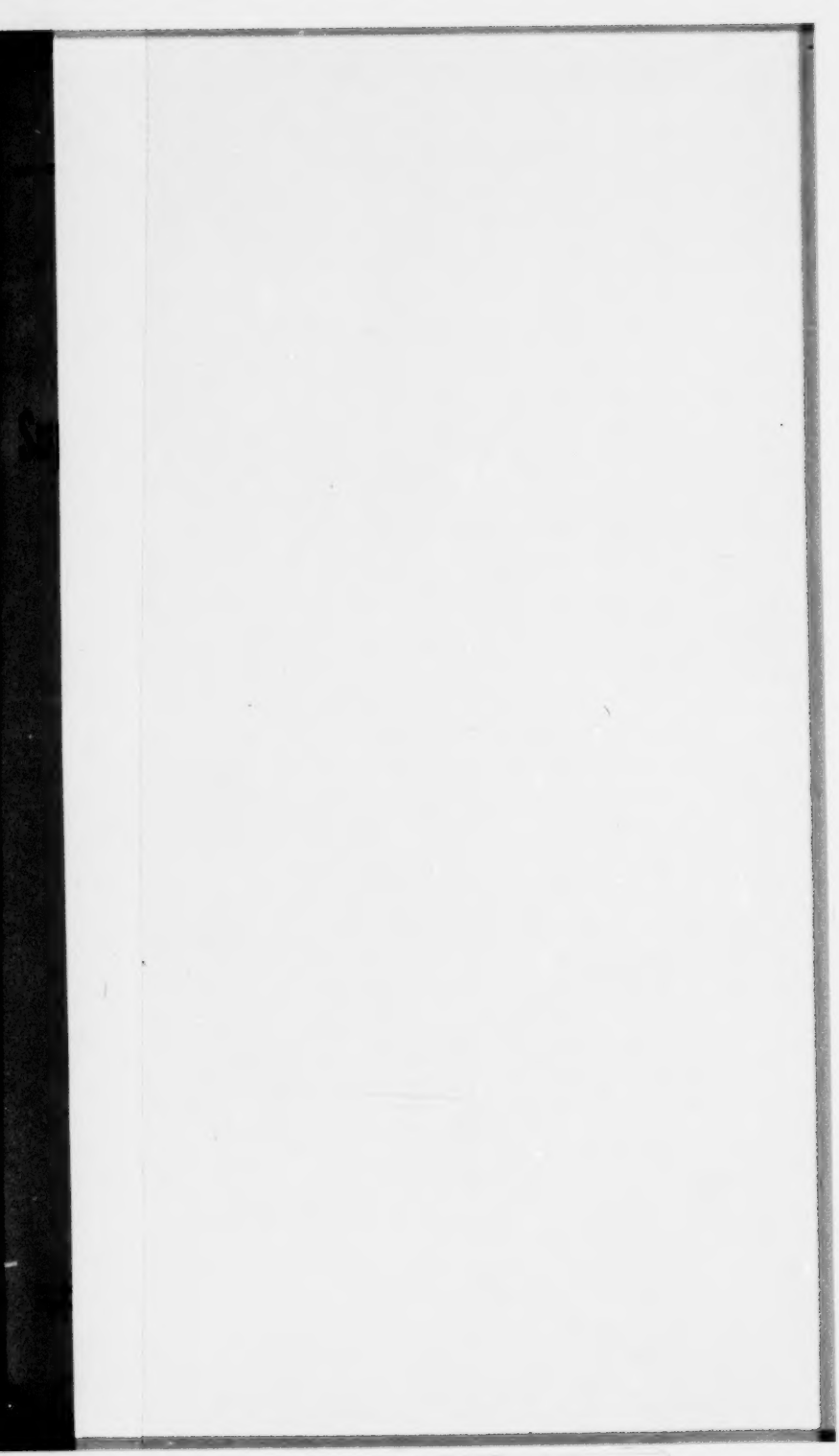

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J. & L. SNOUFFER, INC.,
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BRIEF OF RESPONDENTS.

WILLIAM S. EVATT,
ROBERT L. BARTON,
Attorneys for Respondents.

MIDWEST LAW PRINTERS AND PUBLISHERS, INC., Columbus 15, Ohio